

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL T. TAVARES, JR.,

Plaintiff,

v.

DR. J. BRUCKNER, DENTAL PROPERTY
OFFICERS, and SUPERINTENDENT,

Defendants.

No. C10-5922 RBL/KLS

ORDER TO AMEND OR SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Under separate Order, Plaintiff has been granted leave to proceed *in forma pauperis* (IFP). Before the court for review is Plaintiff's civil rights complaint. ECF No. 6. After careful review, the court declines to serve the complaint because it is deficient.

DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

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1 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
2 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
3 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
5 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
6 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
7 to relief above the speculative level, on the assumption that all the allegations in the complaint
8 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007)(citations omitted).
9 In other words, failure to present enough facts to state a claim for relief that is plausible on the
10 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

12 The court must construe the pleading in the light most favorable to plaintiff and resolve
13 all doubts in plaintiff’s favor. However, conclusory allegations of the law, unsupported
14 conclusions, and unwarranted inferences need not be accepted as true. *Jenkins v. McKeithen*,
15 395 U.S. 411, 421 (1969). Neither can the court supply an essential fact an inmate has failed to
16 plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266,
17 268 (9th Cir. 1982)).

19 “Under Ninth Circuit case law, district courts are only required to grant leave to amend if
20 a complaint can possibly be saved. Courts are not required to grant leave to amend if a
21 complaint lacks merit entirely.” *Lopez v. Henderson*, 203 F.3d 1122, 1129 (9th Cir. 2000). See
22 also, *Henderson v. Pacific Properties and Development Corp.*, 358 F.3d 1097, 1106 (9th Cir.
23 2004), citing *Doe v. United States*, 58 F.3d 494, 497(9th Cir.1995) (“a district court should grant
24 leave to amend even if no request to amend the pleading was made, unless it determines that the
25 pleading could not be cured by the allegation of other facts.”)

1 On the basis of these standards, Plaintiff has failed to state a claim upon which relief can
2 be granted as to his claims against “Dental Property Officers” and “Superintendent of
3 Washington Corrections Center.” To state a claim under 42 U.S.C. § 1983, a complaint must
4 allege that (1) the conduct complained of was committed by a person acting under color of state
5 law and that (2) the conduct deprived a person of a right, privilege, or immunity secured by the
6 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled
7 on other grounds, *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate
8 avenue to remedy an alleged wrong only if both of these elements are present. *Haygood v.*
9 *Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985), cert. denied, 478 U.S. 1020 (1986).

11 Under 42 U.S.C. § 1983, claims can only be brought against people who personally
12 participated in causing the alleged deprivation of a right. *Arnold v. IBM*, 637 F.2d 1350, 1355
13 (9th Cir. 1981). Neither a State nor its officials acting in their official capacities are “persons”
14 under section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

16 In his complaint, Plaintiff purports to sue “Dental Property Officers (all employed at
17 Washington Corrections Center)” and “Superintendent (of Washington Correction Center),” for
18 improper dental care received at the Washington Correction Center. Plaintiff identifies Dr. J.
19 Brockner as a defendant and includes factual allegations as to Dr. Brockner’s actions. He has
20 failed to identify any other defendant. Thus, he has failed to state a claim under 42 U.S.C. §
21 1983 against the unidentified parties. Plaintiff must allege in specific terms how each **named**
22 defendant was involved in the deprivation of his constitutional rights. There can be no liability
23 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
24 defendant’s actions and the claimed deprivation. *See Rizzo v. Goode*, 423 U.S. 362, 96 S.Ct.
25 598, 46 L.Ed.2d 561 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir.1980); *Johnson v.*
26

1 *Duffy*, 588 F.2d 740, 743 (9th Cir.1978). Vague and conclusory allegations of official
2 participation in civil rights violations will not suffice. *See Ivey v. Board of Regents*, 673 F.2d
3 266, 268 (9th Cir.1982). Plaintiff must set forth factual allegations and allege with specificity
4 the names of the persons who caused or personally participated in causing the alleged
5 deprivation of his constitutional rights.

6
7 Due to the deficiencies described above, the court will not serve the complaint. Plaintiff
8 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
9 explaining why this matter should not be dismissed no later than **February 4, 2011**.

10 An amended complaint must set forth all of Plaintiff's factual claims, causes of action,
11 claims for relief, and any exhibits. Plaintiff shall set forth his factual allegations in separately
12 numbered paragraphs and shall allege with specificity the following:

- 13 (1) the names of the persons who caused or personally participated in causing the
14 alleged deprivation of his constitutional rights;
15
16 (2) the dates on which the conduct of each Defendant allegedly took place; and
17 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

18 An amended complaint operates as a complete substitute for (rather than a mere
19 supplement to) the present complaint. In other words, an amended complaint supersedes the
20 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
21 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
22 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
23 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
24 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
25 involvement of each defendant must be sufficiently alleged.
26

1 Plaintiff shall present his complaint on the form provided by the court. The amended
2 complaint must be legibly rewritten or retyped in its entirety, it should be an original and not a
3 copy, it may not incorporate any part of the original complaint by reference, and it must be
4 clearly labeled the "Amended Complaint" and must contain the same cause number as this case.
5 Plaintiff should complete all sections of the court's form. Plaintiff may attach continuation
6 pages as needed but may not attach a separate document that purports to be his amended
7 complaint. In order to make a short and plain statement of claims against the defendants,
8 plaintiff should include factual allegations that explain how each named defendant was involved
9 in the denial of his rights. The court will screen the amended complaint to determine whether it
10 contains factual allegations linking each defendant to the alleged violations of Plaintiff's rights.
11 The court will not authorize service of the amended complaint on any defendant who is not
12 specifically linked to the violation of Plaintiff's rights.
13

14 Accordingly, it is **ORDERED**:

15
16 (1) If Plaintiff decides to file an amended civil rights complaint in this action, he is
17 cautioned that if the amended complaint is not timely filed or if he fails to adequately address the
18 issues raised herein on or before **February 4, 2011**, the Court will recommend dismissal of this
19 action as frivolous as to the unnamed defendants, pursuant to 28 U.S.C. § 1915.

20 (2) **The Clerk is directed to send to Plaintiff the appropriate form for filing a 42**
21 **U.S.C. 1983 civil rights complaint, a copy of this Order and a copy of the General Order.**

22 DATED this 6th day of January, 2011.

23
24 
25 Karen L. Strombom
26 United States Magistrate Judge